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Second Committee

PROVISIONAL SUMMARY RECORD OF THE TWELFTH MEETING

Held at the Parque Central, Caracas,
on Monday, 22 July 1974, at 4.25 p.m.

Chairman:

later:

later:

later:

Mr. AGUILAR

Mr. PISK

Mr. NJENGA

Mr. MANDAN

Venezuela

Czechoslovakia

Kenya

Fiji

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STRAITS USED FOR INTERNATIONAL NAVIGATION (A/9021 and A/CONF.62/C.2/L.11) (continued)

Mr. KOLOSOVSKY (Union of Soviet Socialist Republics), referring to the draft articles on straits used for international navigation (A/CONF.62/C.2/L.11), co-sponsored by his delegation, underlined the importance of the principle contained in article 1, which provided that all ships in transit would enjoy the same freedom of navigation for the purpose of transit passage between straits used for international navigation between two parts of the high seas. That principle was essential for maintaining the benefits derived from the tremendous development of international trade in recent years. That trade, in which the developing countries had an increasing share, was carried on more and more through straits used for international navigation. The adoption of the principle of innocent passage with regard to those straits would entail the risk of hindering international trade, to the serious detriment of certain countries and the international community as a whole. In particular, it would be prejudicial to the land-locked countries, since the right of access to the high seas would be practically worthless without the freedom to navigate through straits. The Soviet Union attached special importance to that freedom, since its only access to the Atlantic and the Far East was through straits, and its coastal shipping linking the far-flung points of its extensive territory passed through a number of straits.

The USSR recognized the need to protect the security of coastal States bordering on straits used for international navigation between one part of the high sea and another, but it also believed that the security and other interests of countries that used those straits, which comprised the majority, should also be taken into account. The security of the USSR depended upon communications by sea and through straits. Consequently, his delegation could not agree that matters relating to navigation through straits used for international navigation admitted unilateral solutions. Attempts to modify the traditional régime or to limit transit through those straits were against the interests of the international community.

Draft article 2 referred to straits which connected the high seas with the territorial sea of one or more foreign States and which were used for international navigation. The principle of innocent passage applied to those straits.

Article 3 established the equal freedom of overflight for those straits whose

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air space had been traditionally used by foreign aircraft for flying from one part of the high seas to another.

In preparing articles 1 and 3, special attention had been paid to the interests of the coastal State. Ships using the straits were placed under the obligation not to cause any threat to the security of coastal States, various acts were prohibited, strict compliance with international rules was required, and liability for damage caused to the coastal State was imposed upon the owner of the ship or aircraft or the person causing the damage, or the flag State or State of registry.

The draft articles demonstrated the willingness of their sponsors to work on the basis of co-operation and the conciliation of the diverse interests. He expressed his conviction that it would be possible to reach agreement on such a basis.

Mr. GOERNER (German Democratic Republic) said that because of its geographical situation, his country was obliged to give special attention to the question of the legal régime of straits. Straits connecting two parts of the high seas and used for international navigation were of vital interest to all States. International navigation depended especially on that category of straits, although they constituted a relatively small fraction of all existing straits. There existed at present a régime which generally guaranteed free transit for the ships of all States and constituted a well-balanced regulation of the interests both of the users of those straits and the States adjacent to them. An important task of the new convention on the law of the sea would be to guarantee that all ships would enjoy equal freedom of navigation for the purpose of transit passage through such straits. Passage through those straits was an inherent part of the principle of freedom of the seas and was a generally recognized rule of international law. The decisive factor in determining the legal régime of straits was not their breadth, but the fact that they connected two parts of the high seas and were used for international navigation. In the interest of protecting international air transport, his delegation believed that the new convention on the law of the sea would have to reaffirm the principle that all aircraft should enjoy equal freedom of overflight over those straits whose air space had been traditionally used by foreign aircraft flying between two parts of the high seas.

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(Mr. Goerner, German Democratic Republic)

If a coastal State bordering on a strait linking two parts of the high seas extended its territorial sea to the maximum breadth of 12 nautical miles so that the strait was included in the State's territorial sea, that must not lead to a change in the existing régime in and over those straits. It was not in the legitimate interests of the international community of States or among the principles of international law as laid down in the United Nations Charter that a coastal State should take decisions on its own concerning world sea routes or obstruct the transit of a given State's ships or of a given category of ships through straits connecting two parts of the high seas. On the other hand, any straits-State had a legitimate right to ensure respect for its security, territorial inviolability and political independence, and for other legitimate rights such as that of preventing pollution of its coasts. His delegation therefore favoured inclusion in rules relating to passage through straits of detailed provisions for the protection of the legitimate interests of coastal States, provisions which should be strictly observed by users of the straits. It should also be provided that the users of the straits were liable to the coastal State for any damage they caused to it, its citizens or its juridical persons.

His delegation believed that in straits which led from the high seas to the territorial sea of one or more foreign States, it would be justified to provide that the principle of innocent passage should apply to all ships. Although such straits were not so important for the international community as straits connecting two parts of the high seas, they could be of great interest for the navigation of individual States, and it therefore seemed necessary to provide that straits-States would not suspend innocent passage through them.

His delegation favoured a well-balanced consideration of the interests of flag States and of States bordering on straits used for international navigation; it believed that the draft articles contained in document A/CONF.62/C.2/L.11, of which the German Democratic Republic was a sponsor, was fully in line with that objective, and hoped that on the basis of those draft articles a constructive solution corresponding to the interests of all States could be found.

Mr. Pisk (Czechoslovakia) took the Chair.

Mr. TORRAS DE LA LUJAN (Cuba) said that his country favoured the maintenance

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(Mr. Torras de la Luaz, Cuba)

of freedom of navigation and overflight during the transit of ships and aircraft through and over straits used for those purposes, a position which had its origin in Cuba's particular situation and which was vindicated by historical experience. Because of the aggressive policy towards Cuba which the United States had pursued since the beginning of the Cuban Revolution, principally in the seas surrounding Cuba, it was vitally important for his country, from the standpoint of both economics and defence, that there should be a guarantee that maritime communications with other continents could not be cut off; that was an interest which did not conflict with the interests of other developing countries which were engaged in defending their sovereignty and independence.

So-called "innocent passage" gave coastal States the possibility of obstructing, on various pretexts, transit through the strait on which they bordered. The Caribbean, in view of its characteristics, could thus again come under United States domination and that would put Cuba and other islands in a difficult position, an experience which was not confined to the Caribbean. Moreover, there were numerous military alliances, dominated by the imperialist Powers, which in practice guaranteed those Powers freedom of movement for their fleets through almost all straits, whatever the régime of passage. It should be added that there were no fewer than 15 straits and channels, including some which were important for international navigation, lying between two colonial territories, or with at least one coast occupied by such territories.

Some Governments of developing countries which were engaged in consolidating their independence believed that the régime of "innocent passage" through straits up to 24 miles wide was a guarantee of their sovereignty, but what really guaranteed the sovereignty of a country was not "innocent" or free passage but a Government that was stable and fully independent, rooted deep in the hearts of the revolutionary people and which had the solidarity and support of the progressive countries and forces. When Cuba, which had straits on every side, maintained freedom of transit, it did not give up one iota of its sovereignty, which was guaranteed by its revolutionary Government and by its entire people, as had been shown at those momentous times when its very survival was at stake.

It was in the interest of all countries that the passage of ships and flight of aircraft through or over their straits should not in any way prejudice their security, pollute their seas, endanger navigation or damage coastal States with impunity. That

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(Mr. Torras de la Luaz, Cuba)

could be guaranteed without the necessity of establishing so-called right of "innocent passage". It was necessary to ensure that the international legal régime of the seas was strong, accepted by the overwhelming majority of States, and defended through the united action of revolutionary and anti-imperialist Governments.

Mr. NYAMDO (Mongolia) said that his country's position on the item under consideration was based mainly on its strict adherence to freedom of international navigation as a fundamental principle of contemporary international law. At the same time, it fully shared the legitimate concern of coastal States, especially with regard to their security, conservation of their resources, safety of navigation and prevention of pollution. In view of the importance of international navigation through straits used for such navigation, the régime of passage should be established so as to ensure freedom of navigation through such straits for the ships of all nations and so as to safeguard the rights and legitimate interests of the straits-State. In other words, a proper balance should be struck which served both the interests of the international community as a whole and those of the States adjacent to the straits. Such a balance was struck in a very constructive fashion in the joint draft articles submitted by Bulgaria, Czechoslovakia, the German Democratic Republic, Poland, the Ukrainian Soviet Socialist Republic and the Soviet Union (A/CONF.62/C.2/L.11), which was a real reflection of the interests of the world community and of the coastal States. His delegation believed that that proposal provided a solid basis for negotiations on the subject, and supported it fully.

Mr. MOORE (United States of America) said that the inadequacies of the traditional doctrine of innocent passage were well known. His delegation appreciated the trend in the debates as well as the various proposals in the Committee, which reflected an understanding of the importance of navigation and overflight through straits for the global flow of trade and communications and for a stable and peaceful world order and showed that there need be no conflict between the interests of States transiting and States bordering straits. The proposals reflected the three categories of concern most frequently expressed by States bordering straits: the security of the coastal State, safety of navigation and prevention of pollution. With respect to the security of States bordering straits, his delegation agreed that the chapter on passage through straits used for international navigation might specify that the right of

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(Mr. Moore, United States)

unimpeded transit was to be exercised solely for the purpose of continuous and expeditious transit of the strait. The treaty should require that ships and aircraft in transit refrain from any threat or use of force, in violation of the Charter of the United Nations, against the territorial integrity or political independence of a State bordering the strait. Secondly, with respect to safety of navigation, it was possible to achieve a balance which would fully protect the interests of States whose ships and aircraft transited a strait and the interests of States bordering the strait. The first step was necessarily to ensure that transiting vessels and aircraft complied with applicable international safety regulations. The draft articles presented by the United Kingdom (A/CONF.62/C.2/L.3), which his delegation supported, met that need.

With respect to aircraft, his delegation felt that civil aircraft in transit should comply with the high seas standards, recommended practices and procedures established by ICAO under the Chicago Convention. On the other hand, it was necessary to encourage States bordering straits to propose traffic separation schemes, which should be submitted to the competent international organization for approval.

The third category of concern related to the prevention of pollution and in that connexion he stressed the importance of the United Kingdom proposal to require that ships in transit should comply with international regulations, procedures and practices for the prevention and control of pollution from ships.

With respect to both safety and pollution in straits, he stressed the importance of making adequate provision for compensation in case of damage; the provisions concerning liability envisaged in the United Kingdom draft articles and in the proposals submitted by a number of Eastern European States were interesting in that connexion. Similarly, it should be remembered that some straits required special standards in addition to those universally adopted; for that reason, his delegation would welcome States bordering a strait recommending to the appropriate international organization for approval any special safety or pollution standards which they felt were unnecessary; in that way, States bordering the strait would have a predominant role in the formulation of such special standards, but at the same time, the interests of the international community would be fully protected.

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(Mr. Moore, United States)

His delegation noted with satisfaction that most of the recently introduced proposals concerning transit through straits included the essential element of transit by aircraft, while there had been suggestions that the Conference should not consider questions related to overflight of aircraft, it should be recalled that such questions were inseparably linked with the law of the sea in the 1958 Geneva Conventions; moreover, since the breadth of the territorial sea would be decided by the Conference, the question of overflight could not be avoided unless some States were willing to forgo their sovereignty over the air space above their territorial sea. At the present time, all aircraft, both private and State-owned, had the right to overfly high seas areas, including high seas within straits used for international navigation. Unless adequate provision was made concerning overflight of straits, extension of the territorial sea to 12 miles would alter that basic right of overflight through a number of straits used for international navigation which would be overlapped by a 12-mile territorial sea. The Chicago Convention was insufficient for the protection of that right, for three reasons: firstly, not all States had become parties to that Convention; secondly, with respect to overflight of territorial waters by private aircraft, the Convention authorized States in certain circumstances to restrict or suspend overflight, and thirdly, the provisions of the Convention did not apply to overflight by State-owned aircraft.

Finally, his delegation wished to state that unimpeded transit of straits used for international navigation and the interests of States bordering straits in matters of security, safety of navigation and the prevention of pollution were complementary matters, and the Conference should prepare articles which would fully protect the interests of all States.

Mr. MYRSTEN (Sweden) said he wished to make his delegation's position perfectly clear. The rules of innocent passage were aimed at creating a balance between the interests of coastal States and those of international navigation. The present rules on that subject were the result of the compromise reached at the First Conference on the Law of the Sea. As with most compromises, those rules contained weak points. However, his delegation felt that that did not warrant the adoption of totally new criteria in order to arrive at the aforementioned balance. For that reason, his delegation felt that any revision should be made within the framework of the present rules.

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(Mr. Myrsten, Sweden)

However, if a majority of the States participating in the Conference favoured a régime other than that of innocent passage for passage through international straits, his delegation felt that such a régime should be applied only to those straits which at present constituted part of the high seas and, that in any case, narrow straits, that was to say those of less than six nautical miles in width, i.e., twice the minimum breadth of the territorial sea, should be exempted from any such régime. His delegation's position was based on the fact that it was not fair to ask coastal States to give up the control they had exercised for hundreds of years in accordance with the rules of international law over passage through narrow straits.

In conclusion, he stated that should the Conference decide to adopt a new régime for passage in international straits, his delegation would support the proposal submitted by the delegation of Denmark as an amendment to the United Kingdom proposal (A/CONF.62/C.2/L.3).

Mr. WARIOBA (United Republic of Tanzania) said that in dealing with passage through straits used for international navigation, it was necessary to distinguish between ships performing national duties and ships performing international duties. Merchant ships performed an international duty and their passage through straits should not be hampered in any way; in that respect his delegation was ready to negotiate on a régime that would ensure them easy and safe passage; that régime should be prepared at all levels, international, regional, subregional and national, and should determine the rights and duties of all parties in respect of the passage of ships through straits; regions and States would be expected to ensure the implementation of the general norms.

In that connexion, the flag State, for example, would be responsible for the technical requirements of ships, such as construction standards, and the coastal State would be responsible for rules that would ensure speedy and safe passage. To that end, the coastal State would need information in order to know the amount of traffic at any time and to supervise passage accordingly. He did not therefore see any reason for objections to advance notification of a ship's passage through a particular strait and he questioned the basis for maintaining that that kind of power for the coastal State would be detrimental to international navigation.

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(Mr. Warioba, Tanzania)

With regard to warships, they were not, in his delegation's opinion, in the service of the international community: rather, they were used to further the foreign policy objectives of a few States. Warships should therefore give notification of passage and should not pass through a strait secretly because of the risks to the coastal State. In any case, why the secrecy for warships if their passage was peaceful?

The point he wished to make was that merchant navigation was the only truly international type of navigation and should be safeguarded at all times; but warships should observe norms that would ensure peaceful passage when they used international straits.

His delegation did not support proposals such as those submitted to the Sea-Bed Committee by the United States and the Soviet Union or the United Kingdom proposal in document A/CONF.62/C.2/L.3, which seemed aimed at regulating the behaviour of ships instead of the behaviour of States, which was the real purpose of the Conference.

Mr. Njenga (Kenya) took the Chair.

Mr. PISK (Czechoslovakia), speaking as one of the sponsors of document A/CONF.62/C.2/L.11, pointed out in the first place that in the new convention on the law of the sea, the passage of ships through straits used for international navigation should be dealt with as a specific problem, separate from the problems of passage of ships through the territorial sea, because of the importance of such straits for world trade and communication and their present position in international law. In the case of the territorial sea, which was sometimes of vast breadth, the interests of the coastal State, particularly in respect of security, were of decisive importance. The situation was different in the case of passage through straits, which as a rule were only a few miles wide, where the interests of the international community as a whole in maintaining smooth international navigation, transport of goods and friendly relations among States should prevail. The situation of straits governed by special international treaties should not be affected by the general régime to be adopted.

In the second place, there was a large number of straits situated outside major international sea-lanes and used, as a rule, only by the coastal States. For all ships in those straits, the régime of innocent passage was appropriate. That applied also to straits used for international navigation, linking the high sea and the territorial sea of one or more States.

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(Mr. Pisk, Czechoslovakia)

The main problem was to establish a viable legal régime for the passage of ships through straits used for international navigation and linking two parts of the high seas. There were relatively few such straits, but an overwhelming majority of sea routes and the bulk of the maritime goods transport passed through them. The régime for those straits should be based on the principles of equality of States, mutual co-operation and the development of friendly relations. Any restrictive measures, which could cause delays in the passage of ships and discrimination of any kind, should be rejected. Restrictions would increase transport costs and thus affect not only the users of the straits, but many other countries as well.

His delegation did not find arguments based on the security of the straits-States convincing as justification for restrictions. The principle of free passage had not affected the security of such States; nor would any restriction of that principle guarantee it. The best guarantee was the fact that any act of aggression committed in the straits against the coastal States would be contrary to the interests of States using the straits.

Freedom of navigation was not incompatible with the needs arising from the special situation of archipelagic States, whose legitimate interests should be recognized and reconciled with those of the international community.

The draft articles were based on the principle that all ships in transit in straits used for international navigation between two parts of the high seas should enjoy equal freedom of navigation. That freedom should be exercised only for the purpose of transit passage through the straits and in conformity with certain rules set forth in the draft. Those rules prohibited any threat to the security of the coastal States bordering on the straits or to their territorial integrity or political independence. Ships in transit should take all necessary precautions to avoid causing pollution or other damage to those States, and the latter should be compensated for any damage which might be caused. The draft explicitly confirmed that the sovereign rights of the coastal States with respect to the surface, the sea-bed and the living and mineral resources of the straits should not be affected. Ships in transit through the straits should comply strictly with the international rules concerning the prevention of collisions or other accidents and observe the established order of traffic and dividing lanes in all straits where there was heavy traffic. On the other hand, the coastal States should assume the obligation not to interrupt, suspend or impede the transit of ships through the straits.

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(Mr. Pisk, Czechoslovakia)

To sum up, the draft reconciled the rights and duties of the coastal States with those of the States using the straits. A similar balance could be worked out from the draft concerning freedom of overflight of such straits by aircraft.

As a land-locked country, Czechoslovakia considered that freedom of navigation for the purpose of transit passage through straits used for international navigation was essential to guarantee its free access to the oceans and the ocean floor.

Mr. VARVESI (Italy) said that his delegation's position was set forth in the proposal submitted to the Sea-Bed Committee which appeared in volume VI of document A/9021. Nevertheless, the document submitted by the United Kingdom delegation was extremely interesting; it seemed to contain useful material and to facilitate an understanding on the question of straits. His delegation would give favourable consideration to possibilities for reaching a satisfactory solution in the consultations to take place on the subject, taking into account other proposals submitted, and might support such a solution if it met the concerns underlying his proposal.

The meeting rose at 6.15 p.m.